

(2003) 01 JH CK 0011

Jharkhand High Court

Case No: MA No"s. 257 of 1992 (R) , 134, 135, 548 and 549 of 1993 (R) and 140 of 1994 (R)

New India Assurance Co. Ltd. etc.

APPELLANT

Vs

Turki Kui and Others etc.

RESPONDENT

Date of Decision: Jan. 30, 2003

Acts Referred:

- Motor Vehicles Act, 1939 - Section 92A

Citation: (2003) 2 ACC 437 : (2003) 2 JCR 412

Hon'ble Judges: Vinod Kumar Gupta, C.J; R.K. Merathia, J

Bench: Division Bench

Advocate: Alok Lal, in M.A. Nos. 257 of 1992R, 134 of 1993R and 135 of 1993R and R.P. Gupta, in M.A. Nos. 548 of 1993R, 549 of 1993R and 140 of 1994R, for the Appellant; P.C. Roy, Jaya Roy, K.K. Sahu, R.P. Gupta, D.C. Ghose, A. Sen, P.K. Mukhopadhyay, B.M. Tripathy, I. Sen Choudhary, A.K. Jha and Vandana Singh, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. By this common judgment, we propose to dispose of all these appeals together.
2. Three appeals being M.A. Nos. 548 and 549 of 1993 (R) and 140 of 1994 (R) have been filed by the owner of the truck in question and the other three appeals (M.A. Nos. 257 of 1192 (R), 134 and 135 of 1993 (R) have been filed by the Insurance Company. The accident in question occurred on 29th May, 1984 in which some persons died and some received injuries. All the deceased persons or the injured persons were travelling as passengers in the truck bearing registration No. BRS 2851. Admittedly, as on the date of the accident (29th May, 1984), the law applicable was the Motor Vehicles Act, 1939. On some reasoning the Tribunal held in three cases the owner responsible to pay the compensation amount. In other three cases, the Tribunal held the insurance Company responsible and liable to indemnify the owner and hence to pay the awarded amount. Of course, it is undisputed that the truck in question was insured with the appellant Insurance Company. The basic

issue, therefore, to be decided is whether in these three cases in which the Tribunal held the Insurance Company liable to pay the awarded amount, such finding was correct or not.

3. The issue relating to the liability of the Insurance Company to pay the compensation amount relating to or arising out of accident involving the persons travelling in a goods vehicle (truck) has been the subject matter of controversy for a long time and the judicial opinion on the subject has been divided. It is only recently that in the case of New India Insurance Company Ltd. v. Asha Rani and others, reported in 2002 (8) SC 594 a 3-Judge Bench of the Supreme Court has finally set at rest all such divergent views and has authoritatively pronounced that in all cases falling under 1939 Act, where the persons were travelling in a truck, whether on payment or otherwise, the Insurance Company was not liable to pay the awarded amount.

4. In view of the aforesaid authoritative pronouncement of their Lordships of the Supreme Court in the New India Assurance Company v. Asha Rani and Ors., (supra), we have no hesitation in holding that in those three cases where the Tribunal held the Insurance Company liable, the award to that extent deserves to be set aside and the liability to pay the awarded amount instead has to be passed on to the owner. In the other three cases where the liability has already been saddled upon the "owner", no interference on the question of liability is called for.

5. In M.A. No. 257 of 1992 (R) the Tribunal has awarded compensation of Rs. 50,000/- (rupees fifty thousand. In M.A. No. 140 of 1994 (R), the Tribunal awarded the compensation of Rs. 39,900/- (rupees thirty nine thousand and nine hundred). In so far as M.A. 257 of 1992 (R) is concerned, upon hearing the learned counsel for the parties and on consideration of the age of the deceased being 45 years and the fact that he was an earning labourer, we feel that the Tribunal perhaps erred in assessing his monthly income at Rs. 500/-. In our view, the monthly income should have been on the higher side and therefore, we enhance the compensation from Rs. 50,000/- to Rs. 75,000/- (rupees seventy five thousand). In M.A. No. 140 of 1994 (R) similarly on consideration of all the, relevant aspects and looking to the Income of the deceased and his age being 50 years as also the fact that he left behind 7 dependents, we increase and enhance the compensation from Rs. 39,000/- to Rs. 60,000/-. All other terms of the award in these two cases shall remain the same.

6. Based on the aforesaid observations and the reasoning, therefore, all these appeals are disposed of as herein below :--

(i) In all the six cases, the liability to pay the awarded amount shall rest on the owner of the vehicle in question.

(ii) The awards in which the liability has been saddled upon the insurer appellant to pay shall stand set aside to that extent and as indicated in (i) above, this liability shall rest upon the owner. Appeal Nos. M.A. 257 of 1992 (R) and M.A. No. 134 and 135 of

1993 (R) are accordingly allowed.

(iii) In M.A. No. 140 of 1994 (R) the compensation amount is enhanced from Rs. 39,000/- to Rs. 60,000/- (Sixty Thousand).

(iv) In M.A. No. 257 of 1992 (R), the compensation amount shall stand enhanced from Rs. 50,000/- to Rs. 75,000/- (seventy five thousand).

(v) All other terms of the awards shall remain unchanged and operative.

(vi) Appeals being M.A. 548 and 549 of 1993 (R) and M.A. 140 of 1994 (R) are dismissed. Cross objections filed by the claimants are allowed to the extent indicated herein above.

7. In all the three appeals filed by the Insurance Company namely M.A. Nos. 257 of 1992 (R), 134 and 135 of 1993 (R), and if the appellant Insurance Company in these appeals has deposited any amount in this Court the same shall be returned to it by the Registry on the appellant making applications in that behalf.

8. In order to ensure that the claimants receive the compensation amount from the owner and if need be to execute the award against the owner, we direct that the owner shall not part with the possession of the vehicle in question or its ownership.

These appeals are accordingly disposed of. No order as to costs.